

A democratic society cannot support both huge prison systems and successful school districts. They are unable to coexist harmoniously. It is simply not feasible. One feeds off the other. Building and maintaining a vast prison system means school districts will have to suffer.

Dollars earmarked for criminal justice, whether they be for law enforcement or corrections, should never be used to vigorously police and systematically incarcerate as a macro and constant ideology. Obviously, those who victimize deserve to be punished. But education is the key, not mindlessly subscribing to endless domestic wars against one's own people. Bankrupting the future in a futile attempt to sanitize the present has not made the streets safer. On the contrary, America leads the world in both deviance and rates of incarceration.

Since Californians are the ones responsible for overwhelmingly approving three strikes in 1994, they should be the ones to fix it -- not the Supreme Court. Three strikes is purely a California problem, created by California's drug war mongers and prison industrialists.

A 2004 ballot initiative is in the works to amend three strikes to apply to only serious crimes. The goal is not to set free predators and violent criminals, but to close an ugly chapter of California history that had both shoplifters and drug addicts receiving life sentences alongside murders and rapists.

For those of us struck out for nonserious transgressions, we are our only victims. While those who continue to dogmatically cling to the criminal justice status quo are the real perpetrators -- supporting injustice, no matter what the cost.

EUGENE ALEXANDER DEY is a California prison inmate incarcerated in Lancaster State Prison. He is a freelance writer and represents himself on appeal as he challenges his conviction and sentence.

# VOICE OF EUGENE ALEXANDER

DEY

California "Three Strikes"

DRUG WAR PRISONER

POETRY  
LETTERS  
ANALYSIS

March 19th, 2003

"The World Gets Bombs, We Get Bars!"

## POLITICAL PRISONDOM

It becomes an impossible, burdensome task to muster up any type of remorse for the act which lead me to this institution of hopelessness, redundancy, and corruption. For the instant pseudo-offense, the absence of tangible victimization renders draconian punishments the actual perpetrators and people like myself the unfortunate recipients of an overzealous regime.

Sure enough, in my distant past, I made some serious mistakes. Nefarious. This was long ago. For my transgressions I was required to pay a very heavy price. That price I paid. I put distance between my previously self-destructive behavior, leaving prison a better man. I made a choice. I made a permanent break. I paid my debt in full.

The politics which fuel the system of American justice has placed me in a growing population of those suffering in various forms of political prisondom. The sense of being the only victim in the instant matter is impossible to escape. Undemocratic is this wretched application of how a sovereign is able to police itself -- defying all sense of logic and fundamental fairness.

One's debts are never truly paid in that huge rates of incarceration, America's solution to crime, have resulted in many of us being treated as if we have continued to commit criminal acts. Once a thief always a thief, even when one doesn't steal. Justice blinded by the heavy-hand.

In civilized societies, minor deviance is addressed in its proper context. In societies less civilized, mindless prohibitions are coupled with unreasonable punishments. Throughout a young nation's history this destructive cycle is repeated. Eventually maturing, the civilized nation abandons what is obviously wrong. It corrects itself in an attempt to preserve itself.

Gulags of addiction peppering the landscape are all these prisons and jails. These monuments of last resort become commonplace in a society which embraces penalogical industrialism. Society's trash being another man's cash.

Eugene Alexander Dey  
2003

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## CALIFORNIA'S THREE STRIKES: THE FIGHT CONTINUES

By Eugene Alexander Dey

It should surprise no one that the United States Supreme Court upheld the constitutionality of sending shoplifters to prison for life.

I am one of over 4,000 nonviolent inmates sentenced under the heavy-hand of California's three strikes sentencing law. All across the state, for those of us similarly situated, our families and supporters had hoped for a favorable ruling in. Lockyer v. Andrade and Ewing v. California.

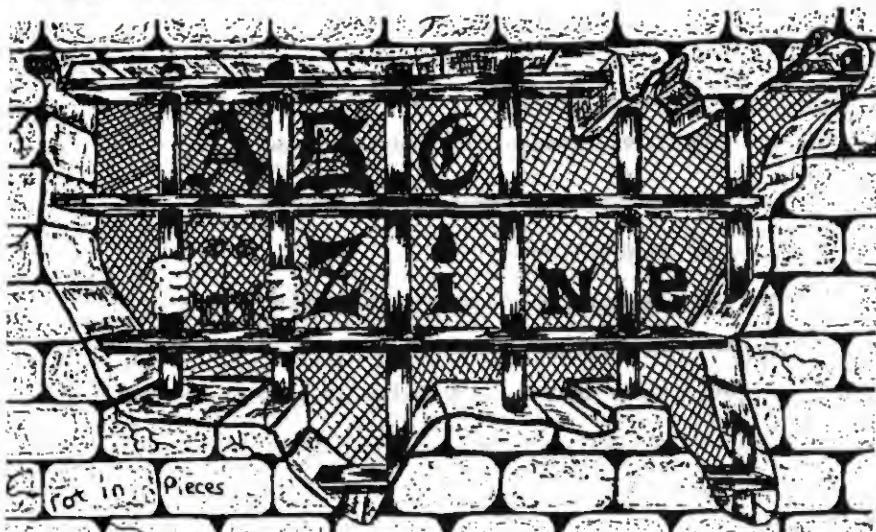
On March 5, 2003, a sharply divided Supreme Court held in a 5 to 4 decision that sending petty theft offenders to prison for life did not violate the 8th Amendment's ban against cruel and unusual punishment.

A nonviolent third strike covers a lot of ground. In California, a three strikes sentence can be given for "any" felony if one has two or more serious or violent priors. It does not matter how long ago these convictions occurred, or how minor the instant offense. Of the 26 states and the federal governments who have a form of three strikes on their books, California stands alone in the "any" felony distinction.

Regardless of what the proponents of three strikes profess, it should not take a Supreme Court debate to illustrate the fundamental unfairness of giving someone a life sentence for a crime which usually carries a sentence of a couple of years. But apparently it does. And obviously the nation's highest court will continue to give states strong deference to do as they please in criminal justice matters, no matter how outrageous or extreme the consequences.

court in California, and the CDC as well. Additionally, California's fixation with incarceration has over 29,000 foreign nationals confined in the state prison system. Included is a chapter on INS detainees, and the procedures which govern such matters.

Chapters covering the AEDPA and PLRA contain some, but by no means all, of the voluminous decisions coming down from the U.S. Court of Appeals, and the U.S. Supreme Court. Due to the hasty manner in which Congress put these politically-motivated laws together, the various procedures, rules, and deadlines associated with these laws have resulted in much litigation -- with many precedents yet to come. However, for a veteran prisoner pro se litigant, the Handbook is a well-received update. For a would-be institutional activist, the Handbook is "mandatory" reading. For all others, they ought to check it out anyways.



To order the California State Prisoner's Handbook send \$40 (prisoner-only subsidized price) to: Prison Law Office, General Delivery, San Quentin, California 94964. The price covers shipping and handling. The non-prisoner price is \$160.

58

## Table of Contents

1. Poems: Political Prisoner / Again	P. 223
2. Letters - Three Strikes / Education	P. 485
3. Essays: TO FIGHT THE GOOD FIGHT: THE WAR TO END THE WAR ON DRUGS	P. 7
4. THE HEAVY-HAND OF JUSTICE	P. 8
5. The Inglewood Police Beating: A Rite of Passage	P. 28
6. California Prisoners Try To Extend Their Ban On Obscene Material To Include Nudity	P. 31
7. THE CALIFORNIA THREE STRIKES DEBATE: AND THOSE OF US PERMANENTLY REMOVED	P. 36
8. CALIFORNIA'S THREE STRIKES: THE DEBATE INTENSIFIES	P. 40
9. The Republican War Machine	P. 43
10. California State Prison, Los Angeles County (CSP-LAC): Another In A Long Line Of Oppressive California Prisons	P. 49
11. HEPATITIS C AND THE AMERICAN PRISONER	P. 53
12. CALIFORNIA STATE PRISONER'S HANDBOOK (A Review)	P. 57
13. CALIFORNIA'S THREE STRIKES: THE FIGHT CONTINUES	P. 59

### AGAIN

Over and over I replay in my mind the sequence of events which lead me to this existence. Haunted by my memories. Motivated by fate ... my doomsday dilemma.

Infinitely sad as I make my way in this world within a world. The day-in day-out routines systematically unfold before me, constantly reminding me of my failures. Concrete and steel, enveloping me, becoming part of me, staring holes into my soul.

How many times have I made this trip into myself. The repetitions of duplication weighing heavy on my heart. They leave me wondering, hypothesizing, and rationalizing -- with no answers in sight. I become an amalgam of psycho-social disadvantages. Unable to shake the ghosts from my past. Forced to dance that dance again. Trying to desperately keep in touch.

This latest excursion has taken me on a frightening ride ever-so-closer towards that point-of-no-return. Permanent departures. Frightening. Frightening for you, if you are me. Too young to die.

Wondering if, perhaps, in my infinite stupidity, having failed to realize -- am I already dead? It is as if, in my post-mortem stubbornness, I walk among the living. Oblivious. A shell of what once was. Alive but entombed nonetheless.

Consumed by one's circular pursuits. Buried alive deep inside oneself ... left all alone. How could you do this to me again?

Eugene Alexander Dey  
2003

March 11, 1994

## Three Strikes: A View From Inside

Eugene Dey is serving a 12 years at Soledad State Prison

As an inmate in Soledad State Prison, I have a unique view of California's crime problem - of convicted criminals serving their sentences. I see fear, confusion and anger on some faces because of the proposed "three strikes and you're out" law. Many inmates realize continued criminal behavior will no longer be tolerated: society will punish them with a mandatory life sentence.

I think mandatory life sentences are both good and bad. Violent criminals do the worst damage to society; their victims suffer long-term effects. Three violent felonies is more than enough damage for any one person to commit, myself included.

My argument against the proposal is this: If California lawmakers feel compelled to send career criminals away for life, then they have a greater responsibility to include prevention in their get-tough legislation. I hear a lot of "tough talk" from politicians, but very little about early helping those individuals who later commit crimes.

Government spends up to \$30,000 a year to incarcerate an adult. It costs about \$5,000 a year to send a child to school. The get-tough legislation ignores education; its effect will further the spending gap between inmate and student. If "three strikes" does pass, more and more students of today will become the inmates of tomorrow. Education will fall through a lack of funds.

Six percent of the criminals commit 70 percent of violent crime. The new law that will focus on 6 percent of the criminals is not going to solve California's complex and seemingly out-of-control crime problem. In the last 15 years California has more than doubled its number of prisons. Yet crime continues to soar.

Instead of thinking through some feasible solutions to California's huge problem, our leaders, in a bipartisan panic, have joined forces to pass "three strikes and you're out" to placate voters. The authors of this legislation, and the politicians that support it, are either lying or self-deceived if they believe their get-tough legislation will genuinely reduce crime. Actually, this a short-term appeasement for a long-term problem.

I am a firm believer in education as a catalyst to rehabilitation. Education is the key to fixing society's problems. I am against only revamping California's criminal laws while education is ignored. For

## CALIFORNIA STATE PRISONER'S HANDBOOK

Third Edition (July 2001)

By Steven Fama, Heather McKay, Michael R. Snedeker,  
James F. Smith & the Prison Law Office

57

Reviewed by Eugene Alexander Dey

Almost immediately after the 2nd edition went into print, the California State Prisoner's Handbook was rendered obsolete. Throughout the 1990s, a myriad of heavy-handed state and federal laws resulted in a wholesale change in the manner in which the American criminal justice system would address crime and punishment. For a California prisoner there is no better single source of legal information than the Handbook's 3rd edition, which was published in July of 2001.

With the passage of three strikes in 1994, the repeal of the Inmate Bill of Rights in 1995, the U.S. Congress passing into law the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Prisoner Litigation Reform Act (PLRA) in 1996, California state prisoners are too often in the disadvantageous position of trying to litigate in *pro se* a wide-range of criminal and prison condition issues. And having to do so without the benefit of any significant legal assistance or up-to-date and on-point legal authorities.

Thus, the Handbook's 17 completely revised chapters are an invaluable starting point if one endeavors to seek justice and/or relief. This book is a California prisoner's must-have if they are in any way "active" in their demand to be treated within the parameters of the law.

The veteran attorneys at San Quentin's Prison Law Office have kept the language simple, and each chapter is a fully footnoted resource in and of itself. These chapters are also supplemented with sample forms from every state and federal

with one's antisocial past, an abundance of idle time provides one with many opportunities to reinforce deviant behavior.

Further, densely populated together the nation's most determined drug addicts, and it should come as no surprise to anyone that basic economics will prevail. Someone will supply a valuable product when the demand is significant. When the drugs hit the mainline they are distributed quickly and rather efficiently. The tainted syringes follow the path of the contraband like a Grim Reaper. Prison is a horrible place.

Like with anything coveted or much-sought-after, there is always a price to be paid. In a correctional facility, while the prices go way up, the dosages go way down. Yet, this doesn't deter the hard core addict. Any price, no matter how steep, no matter what the cost, it doesn't matter — addicts are literally dying to get high.

In such places, among those who share needles, it is not uncommon for a whole line of would-be users to be waiting on the same potentially tainted syringe. Many of whom are HCV and HIV positive. This is how an epidemic is spread. These are not the type of people who weigh risks and make logical decisions based on long-term goals. These are hard core dope friends -- and they frequently share or borrow needles. A used or worn-out syringe, which looks like an instrument of death to some, has great value placed on it by others.

With the nation mired in budgetary shortfalls, adequate treatment for all those infected is more expensive than correctional administrators care to imagine. In the meantime, the epidemic continues to spread deeper and deeper into the prison system -- and the American prisoner has become one of the most medically disadvantaged demographics in the nation.

56

every \$1 spent to punish, \$10 should be spent on educational development.

The inmate-to-student spending ratio is way off balance. California's leaders should stop wasting tax dollars trying to out tough-talk each other. They should fix the problem instead of being part of it.

*San Francisco Chronicle Monday May 23rd, 1994*

Education is the Key, Even for Prisoners

#### EDUCATION PRISONS PRISONERS GRANTS

Eugene Dey is a prisoner at Soledad State Prison

As a recipient of post-secondary education for inmates, I saw the tangible benefits to society of Pell grants, which provide college education for the incarcerated. Inmates who have victimized innocent people learn why they perpetuate criminally deviant behavior and may subsequently become productive members of society.

While the statistics vary from source to source, the overwhelming consensus is that post-secondary education decreases the likelihood of continued criminal activity. The national rate of recidivism is around 60 percent - but only 30 percent for college-educated inmates.

The debate over barring inmates from receiving federal Pell educational grants baffles me. How is it that both sides of the political spectrum, apparently fervently opposed to crime, are considering discontinuing funds for a program that lowers the rate of repeat offenses?

Senator Kay Hutchinson, R-Texas, who leads the fight against inmate college programs, says, "Pell grants were sold (to Congress) to help low-and-middle-income families send their kids to college. They were not sold for prison rehabilitation."

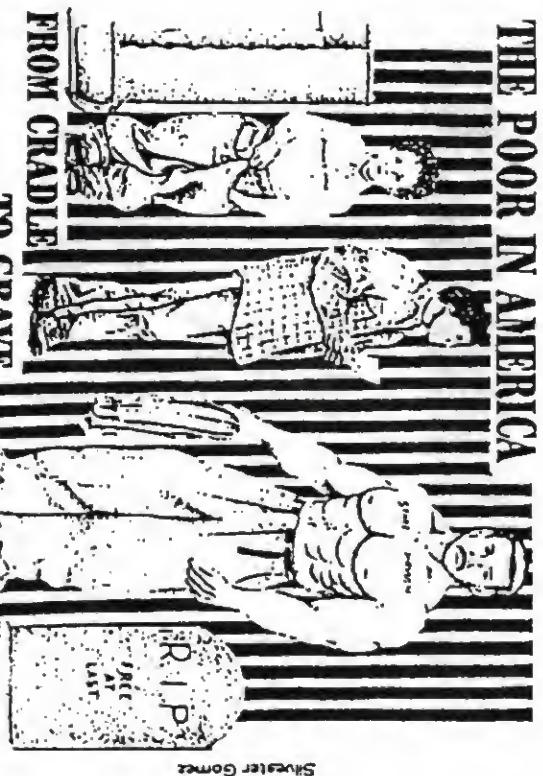
If Senator Hutchinson pursued the issue, she would find that the great preponderance of inmates are from low-and-middle income families. Inmates are all too frequently from poor school districts and start life off at an extreme disadvantage. College education for prisoners can break cycles of generational poverty and low levels of education.

The cost of Pell grants for college classes for inmates is \$40 million a year. Surely a program that will help a large group of structurally disadvantaged people is worth such an investment?

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# THE POOR IN AMERICA



sharing of needles is the unfortunate common denominator in 55 how the virus spreads easily within the American prison system. While the actual infection rates of those carrying either of these diseases vary from state to state, the disturbing fact or the matter are the prodigious numbers of incarcerated individuals who have one or both of these diseases. For these high risk individuals, unknowingly, diseases are passed around like a bottle of cheap wine. Being a largely uneducated and self-destructive demographic, the numbers of those affected will get much worse before they get any better.

Despite a significant body of information illustrating the dangers of exposure to blood, the message is not getting to the nation's population of hard core drug addicts who share needles -- many of whom end up in prison and continue to reinforce their addiction.

Each \$1,500 Pell grant award per participating inmate will save the taxpayer money in the long run: \$25,000 for the cost of a year's incarceration, to be precise.

When I entered prison, I had no post-secondary education and little understanding of the world from which I was separated. Then I enrolled in Soledad State Prison's college program and graduated summa cum laude from Hartnell Junior College. I presently maintain a 3.75 GPA toward a Bachelor of Arts in Social Science.

Prison-based college programs provide people like myself a chance to understand the consequences of being a criminal -- perpetuating the socioeconomic destruction of our own society.

Most prison systems favor a policy of warehousing rather than rehabilitation. As an inmate, I can see why prisoners leave prison and immediately re-offend - nothing is done to discourage their destructive side.

Punishment, warehousing, mandatory minimums, suspending inmate rights, pulling funds from college programs and other get-tough policies will accomplish very little.

When I leave this spring, I hope to become a useful, taxpaying citizen. Too much legislative energy has been spent - and what will society receive in return? Inmates whom a college education might have changed for the better but will instead continue to victimize innocent people - maybe even you.

## Drug Use In Prison: A Closer Look

Prison as an American institution has not been very successful at promoting an environment cohesive with self-improvement. Nor do punitive-correctional methodologies promoted by tough-on-crime lawmakers foster enlightenment in any way, shape or form. On the contrary, with a lack of meaningful programs to inspire one to change or make a break

To make matters even worse, hepatitis C is equally fatal.

7  
In the U.S., 8,000 to 10,000 deaths a year are attributed to this silent killer, with the totals expected to reach 30,000 a year by 2010 -- twice the toll AIDS claims.

Even though HCV has outpaced HIV, very few know much about this infection. Until very recently it has not received much coverage. All the intense activism associated with the AIDS movement hit a peak in the mid-90s and has subsequently subsided.

Since HCV paralleled HIV, it would have been ideal if the AIDS movement had focused on both viruses.

HCV awareness is beginning to pick-up some momentum, although relaunching another movement has been a struggle.

Celebrities going public with their affliction has helped bring the far-reaching implications of the HCV to the attention of the public. Former star of "Baywatch," Pamela Anderson, brought HCV awareness to the front pages when she disclosed to the public that she had contracted the disease from her husband while getting a tattoo. One can contract such viruses through a number of ways: syringes, unprotected sex, tattoo needles, exposure to blood, to name a just a few.

#### Co-infection and the Prison Intravenous Drug User

In 1996 a research study completed in cooperation with the California Department of Human Services uncovered how widespread are HCV and HIV within the California Department of Corrections.

Incoming male prisoners were testing positive for HCV at a rate of 39.4 percent -- with 61.3 percent of them co-infected with HIV. Incoming female prisoners tested positive for HCV at a rate of 54.5 percent -- with an astounding 85 percent being co-infected with HIV.

These are alarming, troubling, and eye-opening numbers. Both being blood-borne maladies and epidemic in proportions, co-infection can be traced to intravenous drug use within the community of drug addicts who lead high risk lifestyles. The

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#### TO FIGHT THE GOOD FIGHT: THE WAR TO END THE WAR ON DRUGS

By Eugene Alexander Dey

In 1996, the state of Arizona fired the first shot in the battle to bring to an end the war on drugs. Backers of the "Drug Medicalization, Prevention and Control Act" launched a successful statewide campaign to address the problem of drugs in a manner other than what has been philosophically embraced by the advocates of the pro-prison school-of-thought. Due to a well-planned effort to educate the public on the need to re-channel one's tax dollars away from the criminal justice system, Arizona's voters approved of drug treatment and rehabilitation over the continued incarceration of nonviolent drug offenders.

After the first year of implementation the Arizona Supreme Court issued a report on the law's effectiveness. Arizona's taxpayers realized a net savings of \$2.6 million in the first year alone due to the fact 77.5 percent of those given probation for drug possession tested negative for drug use. Only 22.5 percent of those afforded access to a community-based treatment program tested positive. This is an outstanding statistic in a generation of astronomical rates of recidivism.

Arizona's success. Proposition 36 came into being even though

California has some of the nation's toughest laws and a prison population of approximately 160,000 inmates. On November 7, 2000, by a margin of nearly two to one, the voters in California approved of drug treatment instead of incarceration for those who have committed a nonviolent drug offense.

For those who stand-fast in their get-tough, pro-prison ideologies, concepts such as treatment for drug addiction is a fundamental flaw in their desire to severely punish any and all transgressors. In order to win the drug war, drug war

proponents subscribe to wide-scale incarceration for any and all who have broken the law -- no matter how minor is their current transgression. For them, treatment comes at a reasonable price -- at approximately \$25,000 a year to incarcerate, multiplied by however many addicts cannot cure themselves on their own. Such a deplorable equation is how America has managed to lock-up roughly two million men and women -- 400,000 of whom are incarcerated for drug offenses.

#### The Need For Treatment As Opposed To Incarceration

Addiction to drugs is a horrible disease. For some, their abuse of various substances takes them to the very depths of humanity. For others, addiction is merely a part of their otherwise normal lives. The drug addict comes from every segment of socioeconomic America. Moreover, there are no instantaneous, one-size-fits-all solutions to a stubborn and convoluted social problem which has resisted all attempts by the government to make it go away. Addiction does not cater to opinion polls, the short-term political agendas of elected officials, nor will it bow-down to tough-on-crime pseudo-solutions.

The hepatitis C virus (HCV) has made its way deep into the American prison system. With 2 million men and women incarcerated in America, it is estimated that 20 percent to 60 percent are infected with HCV. The fact that prison systems are notorious for providing substandard medical care -- whose systemic incompetence, neglect, and institutionalized disregard for human life is the premise for innumerable lawsuits -- renders this national epidemic a matter of life and death.

#### HCV: A Stealth Virus

HCV is often referred to as the "Silent Epidemic." It is the most common blood-borne disease in the U.S. Since approximately half of those infected do not realize they have the disease, in too many instances, treatment doesn't begin until after the virus has progressed to the chronic stage. Hepatitis C can lay dormant for decades. One can have it from 10 to 30 years before they begin to show symptoms. By then it could already be too late.

HCV is a deadly disease. Approximately 85 percent of those infected develop chronic hepatitis C. Although there is no cure, undergoing treatment has been successful in clearing the virus from the body in about 15 percent of the time. They are the lucky ones. The end stages of chronic HCV involves a myriad of liver problems -- including cirrhosis, cancer, and failure of the liver. The disintegration of a vital organ brings about an excruciating death.

Most associate HIV, the virus which causes AIDS, as being the nation's foremost blood-borne disease. Yet, HCV has surpassed it four-to-one. One million Americans are infected with HIV, while 4 million have HCV. At least 1/3 of HIV patients are also co-infected with hepatitis C. Either virus can exacerbate the other.

distinguished by long lockdowns and systemic violence. However, based on the CDC's track record, any number of out-of-line hypotheticals could manifest due to a large group of individuals volunteering to allow mindless prisoncrats the opportunity to apply their pseudo-scientific ideas.

#### In Conclusion

On the real, LAC is shot-out. The place is a quagmire. There is a newly-appointed Warden, M. Yarborough, who wholeheartedly subscribes to the ultra-oppressive school-of-thought practiced throughout the prison industrial complex. There are barely seven (7) 270° design GP housing units in the entire prison (B-Yard has 5 and D-Yard has 2). The rest are honor, special needs, EOP, DDP, SAP, and Ad-Seg. Since LAC has recently been mentioned in the "Prison Focus," and the fact the institution has regressed so far, so fast, I thought it best to provide an accurate depiction of LAC. There are always many perspectives. Furthermore, time will always tell. Yet, and more importantly, before I ever give praise to a prison industrialist, their actions have to stand the test of time. In the meantime, in the here-and-now, LAC is to-the-curb.

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EUGENE ALEXANDER DEY is a California prison inmate incarcerated in Lancaster State Prison. He is a free lance writer and represents himself on appeal as he challenges his conviction and sentence.

UNTIL ALL ARE FREE  
WE ARE ALL IMPRISONED !

Proposition 36 is goal- and success-oriented. The premise of this law acknowledges the purpose of treatment over jail and is to use incarceration as a very last resort. Locking-up nonviolent drug offenders is a downward spiral and a non-solution. Sending someone with a drug problem to prison only serves to indoctrinate them into the unfortunate subculture of gang violence, racism, and oppression. Incarceration does not solve anything because it is designed to punish. Punishment

is exactly opposite of what a nonviolent drug offender needs

10

if there is ever going to be a chance to help them make a permanent break with their antisocial behavior.

The voters in California spoke loudly -- with 61 percent in favor and 39 percent against Proposition 36. Stated in the summary argument of the voter initiative, "The war on drugs has failed ... We pay \$25,000 annually for prisoners when treatment costs only \$4,000."

While numbers and statistics can be deceiving, in this case the numbers paint an egregious picture. The 30 year drug war has accomplished lamentable results and innumerable injustices -- too many to count. The war on drugs has proven to be a destroyer of people. Like in any war, there are many innocent victims who fall prey to the war machine. In the drug war, the families of all these drug war prisoners have become collateral damage.

Furthermore, the voters are simply tired of wasting unfathomable sums of money to incarcerate huge numbers of drug addicts when such a heavy-handed manifestation does not address in a socially responsible manner the problem it is empowered to solve. Despite the war on drugs, society is not safer because nonviolent drug addicts are not the problem. And drugs are more readily available than ever.

Being tough on real criminals does not necessitate the total abandonment of commonsense or fundamental fairness.

Treatment for addiction is what socially mature societies pursue in order to free-up scarce government resources for areas of true societal importance. Without a doubt, large-scale incarceration of drug offenders is a complete failure. The process of criminalizing all drugs drives up their black market value.

and each cell is thoroughly searched. These are punitive searches where staff throw away, confiscate, lose, and damage a lot of personal property. All non-clear appliances are taken to Receiving and Release to be X-Rayed for weapons and glass and law library rights (and therefore due process) are out the window.

At the end of August 2002 a state of emergency was again declared in LAC for the third time in a twelve month period. Three D-Yard officers (2 correctional officers and a 1 Sgt.) were assaulted by black inmates. One was stabbed in the face and the Sgt. was knocked-out. The third suffered minor injuries.

A-Yard (honor) and C-Yard (special needs) came off lockdown when the searches were concluded and the state of emergency was lifted. LAC was under a declaration of "emergency" for approximately a month.

As of this writing, at the end of October 2002, "B" and "D" yards are still slammed. It appears for GP inmates in LAC, the process by which a yard is brought back to normal program after an emergency has been declared will happen in stages. In other words, being GP in LAC means one will experience a lot of cell time -- especially if one is on B-Yard.

#### A-Yard: The Honor Program

In the winter 2002 issue of Prison Focus, K.K. Irvin, the Honor Yard MAC Chairman, provided a rather inviting description of A-Yard.

Here is how it looks from this perspective. A-Yard seems to be a good place for an older, mellow-type convict to do time. Perhaps for someone with LWOP (life without parole), or where one's points do not allow for an transfer to a Level III, placement in an honor program would be a welcome relief.

51

B-Yard is the unofficial "screw-up" Yard. Program is virtually nonexistent. Ever since the 400-plus Hispanic and Black riot on December 20, 2001 -- a riot which received national coverage, with five seriously injured and dozens receiving medical attention -- B-Yard has never totally returned to normal program.

Immediately after the 12/20 riot -- which left staff feeling shell-shocked due to their inept response to a full-on blood-bath -- they started popping cell doors. There were two "on-sight" melees in B3, and lesser incidents in other B-Yard housing units. No one was seriously injured.

A "state of emergency" was declared. B-Yard had regressed into an "on-sight" war-zone.

The 400 inmate riot, and the "on-sight" melees in the housing units, resulted in the implementation of a "Population Management/Movement Policy." In stages, small groups of inmate-volunteer workers were required to work together inter-racially. Then, and only then, these small groups of inmates would get back basic privileges like canteen, packages, phone calls, and contact visits. Yard and Dayroom would manifest once the GP walked to chow without incident over a period of time.

This process is meant to take a long time. For the most part, the correctional methodology of placing the carrot-before-the-cart worked. It appears the desire for privileges, at times, outweighs the dogmas of racial warmongering. Moreover, the prisonrats have never fully restored B-Yard to a 270'-type program. I doubt they ever will.

**State of Emergency: A Contemporary Correctional Tactic**

During a state of emergency all yards are totally slammed

century, the potential for profit in this victimless transgression was too great for the nefarious entrepreneur to resist. Thus, the market becomes flooded with cheap and powerful contraband. Once this illicit commodity becomes a matter of extreme criminality due to heavy-handed laws being the primary criminal justice methodology, the government creates a persevering market force. Addiction, the variable which fuels this industry, cannot be brutalized into submission -- addiction simply does not work that way. Not in a free and open capitalist economy.

#### Proposition 36 and Three Strikes: Two Extremes

Equal protection of the law is guaranteed by the Fourteenth Amendment of the United States Constitution. Yet, in the drug war-era, those in the legislature or judiciary do not want to address obvious constitutional imbalances.

Jackie Goldberg, a member of California's Assembly, has been active in addressing criminal justice matters in a rational manner. "Simple possession drug charges account for 9.6 percent of third strike cases. As of February 28, 2001, 637 persons have received life sentences for possession of a diminutive amount of a narcotic," said Goldberg in regards to how three strikes affects drug offenders.

For some of us, we are serving life sentences in state prison for nonviolent drug offenses per California's three strikes. In other words, we have been in serious trouble in the past, however, in the present, for a nonviolent drug offense, we are sent away forever. Three strikers like myself, and there are many of us, are excluded from any type of treatment because we have failed to previously cure ourselves.

By Eugene Alexander Dey

life inmates serving at least twenty-five years to life due convicted of nonviolent third strike felonies. Of the 7,072 to three strikes, 3,380 of them are convicted of petty, trivial offenses. Overall, there are over 1,100 nonviolent drug offenders who have fallen prey to the wide net cast by three strikes.

While 99.9 percent of the addicts convicted of a nonviolent drug offense in California are being afforded treatment per Proposition 36, there exists a small but significant class of drug offenders -- myself included -- who have been totally left out of this effective treatment over jail phenomenon.

Excluding one class of nonviolent drug offender while including all others is contrary to the very pillars which support the proposition of equal protection. This line of reasoning is one myself and others have no alternative but to pursue in the state appellate courts because we have a legitimate constitutional expectation to receive treatment over prison in light of the passage of Proposition 36. Being a prisoner in the political atmosphere of bi-partisan, criminal justice "toughness" nearly eliminates any expectation of legislative relief. We are simply caught-in-the-middle and too politically risky to touch. Going to the courts is our only chance.

There are many recipients of treatment over jail who also have strike priors. They too have been in serious trouble in the past, yet they managed to remain incarceration free for a five year "washout" period. Thus, under Proposition 36 their strikes have been washed-out. The fundamental flaw in this trouble-free distinction -- those already on parole or probation are automatically included in the treatment over incarceration

For the record, as of the fall of 2002, CSP-LAC (Lancaster) is "one" of the most poorly-run and corrupt prisons in the California Department of Corrections (CDC). While I am sure innumerable, similar-type claims could be made throughout the prison industrial complex, I felt an obligation in political prisonandom to provide an update on the state of LAC.

When I first arrived on B-Yard in the summer of 2000, LAC had four yards of 270' design Level IV. All yards were general population (GP), with a couple of buildings of Administrative Segregation (Ad-Seg, or better known as the "hole" or solitary confinement) on A-Yard.

At that time LAC was a wide-open Level IV and the administration -- under then-Warden E. Roe -- would let a reasonable amount of incidents to occur without any "wholesale" administrative reprisals against the general population (GP).

That was then. A-Yard has now been converted into an Honor Program. B-Yard is strictly GP. C-Yard is full-on Special Needs (i.e., protective custody, prison gang drop-outs, sex offenders, etc.). D-Yard houses the developmentally disabled (DDP), inmates who suffer from various levels of serious psychological problems (EOP), a substance abuse programs (SAP), and a couple of buildings of GP.

A brand new 180' design Ad-Seg building has recently been completed. It is located in the dead-space between yards "B" and "C". This is one of ten brand new Ad-Seg buildings built throughout the CDC. Like the Security Housing Units (SHU) in Pelican Bay, these new Ad-Seg buildings have one-person yards -- as opposed to the SHU yards in CSP-Corcoran which accommodate groups.

scheme despite their being virtually identical to persons such as myself.

In other words, under Proposition 36, every nonviolent drug offender in California is included except those who have failed to remain incarceration free for five years immediately preceding the instant offense, with the exception of those on parole or probation.

By excluding only those who have failed to "washout" their strike priors is conflicting with the intent of the voter because the public voted in substantial numbers to bring to an end expensive incarceration in favor of community-based results-oriented treatment and rehabilitation. How is society's best interest served when they voted to invest scarce revenues in treatment programs, when there are over a 1,100 nonviolent drug offenders serving at least 25 years to life with an estimated lifetime cost to the public of well over \$500,000,000 per inmate. This alone comes to well over half a billion dollars.

From a purely personal standpoint, I cannot escape the genuine belief that I deserve, not punitive incarceration, but a program which will help me with my drug problem. In my distant past, when I was much younger, I was in serious trouble. I do not dispute that when one victimizes another physically, emotionally, or economically, one must pay a debt to society.

Regrettably, I have been there and done that. However, I no longer commit crime. I have not for quite sometime. I learned my lesson and paid my debt. In comparison to crimes I committed in my past (robbery and burglary), this instant transgression in no way compares. In the commission of my so-called crime, I was not bothering anyone. I was merely driving down the road minding my own business. By warehousing me in prison for the



Since the Republicans feel safe politically by investing in war, the American people will have to endure a national agenda focusing on military spending, the sacrifice of civil liberties, huge budget deficits, and nearly every other social program taking a back seat to the military industrial complex.

It has been said that American democracy is unique in that no matter who wins, or how close the vote, there is always a peaceful exchange of power.

As good as that sounds in theory, tell that to the surviving members of deceased Sen. Paul Wellstone's (D-Minn.) family -- whose plane "just happened" to crash while on the campaign trail. Wellstone was an incumbent who had an excellent chance to be reelected to the Senate and perhaps help the Democrats keep control of at least one part of the federal government. While some see the death of Wellstone as a tragic accident, it seems to be a Republican specialty that they capitalize on planes crashing. After all, death empowers the warmonger.

13

renders me a victim -- not a criminal.

**The Drug War-Mongers's Refusal To Give-In**

Regardless of what the Bush administration claims, there exists no factual link between drug trafficking and terrorism. The proponent's of the drug war's propaganda machine quickly deviated from the truth and began a national campaign to tie together America's drug problem and the war against terrorism. "If you quit drugs, you join the fight against terror in America," President Bush said to an audience of anti-drug activists on December 14, 2001. Bush went on to say, "It's important for Americans to know that the trafficking of drugs finances the world of terror, sustaining terrorists."

During the 2002 Superbowl, the Bush administration purchased \$3 million worth of advertising time to begin the drug and terrorism disinformation campaign which President Bush had started in December of 2001. These ads -- which have been saturating American television -- are powerful tools to try and reinvent the societal urgency to re-launch yet another multifaceted front on those unable to overcome addiction to drugs.

To make a public announcement that Osama Bin Laden's Al Qaeda needs drug money is absurd. Bin Laden is a Saudi of considerable wealth. This wealth primarily comes directly or indirectly from oil, not drugs. No one hears President Bush -- who himself comes from an oil rich family -- claiming that gas-guzzling SUV owners need to buy an energy efficient vehicle to fight the war on terrorism. While the truth hurts, a painful reality is what drug war-torn America needs rather than yet another dose of half-truths and the stubborn refusal to admit

much closer to periodic acts of wholesale bloodshed as witnessed on 9/11, and most recently in Bali.

Through repetition and well-crafted dissertations on the need to go on the offensive, Bush has found his voice on the subject of warmongering. Without a shred of evidence to show how Iraq is a direct threat to America, the Republican propaganda-machine has managed to bully the world to at least follow America's lead on the need to take a heavy-handed approach with Iraq. The politics of peace have been replaced by a nonstop barrage of rhetoric. Rather than retire and write their memoirs, old warriors have found new life in the Republican war machine. And they are having a blast. They love this stuff.

The Republicans simply do not want to go into the 2004 election, or any election for that matter, with the possibility of having to defend themselves politically after steering the nation into deficit spending and failing to rectify an economy mired in recession.

The GOP learned from the senior Bush's political demise in 1992. He seen his Gulf War approval ratings disappear during his campaign for reelection because he simply did not have a convincing economic message behind which a significant majority of the American people would rally.

Because of his role in the war on terrorism and/or Afghanistan, if the election were held right now, President Bush would win a second term easily. Moreover, the Republican Party of war will gladly pummel an old foe in Saddam Hussein in order to strengthen their mandate. At least that is their plan.

The Texas warmonger's administration has managed to turn a national tragedy into a wave of pro-war nationalism which helped his party capture a sweep in the mid-term elections.

understand what it is he does, the actual power he possesses. *46*

His dad's Republican Party has molded him into what he has become -- a full-on warmonger who endlessly regurgitates hard core, military industrialist party-line.

Beginning in the 2000 elections, and again in the mid-term 2002 elections, the Republicans brought forth respectable, elder statesmen from previous Republican administrations in order to increase their chances to place themselves firmly in control. They had to convince retired Republicans to come out of retirement, or to delay retirement in order to keep their party in power.

Vice President Dick Cheney, and many key members of Bush's cabinet, like Secretary of State Collin Powell, are Cold War soldiers who are experts in the arts of warfare. During times of peace, Machiavellian skills invaluable during the Cold War do not always make as strong an impact when domestic policy remains in the forefront of national politics. Tax cuts in favor of the richest 5% of the country, and other GOP favorites, while operating in deficit spending, become difficult to defend when the voters are looking for solutions as opposed to rhetoric. That is, unless the nation is transfixed on a war of sorts.

Military action has empowered the Republicans. The Bush administration has assured themselves of an armed conflict with Iraq. The real motivation behind their pro-war stance is to ride a wave of wartime nationalism, created by pummeling Iraq, right into the 2004 election.

Lost in all the hype is the fact that solving the world's problems via war is an impossible task. America's enemies are too many. America's enemies are myriad and deep seated in their hatred -- therefore they are difficult to eliminate. The entire episode of Iraq/Saddam Hussein only brings innocent people that

a 30 year drug war is a miserable failure.

The \$500,000 Al Qaeda used to finance the September 11 attack on America is a drop in the bucket for a group of wealthy fanatics. According to an article published in the Washington Post in early-January of 2002, "Investigators are still uncertain about the origins of the \$500,000 used in the September 11 plot."

The article went on to say, "But US intelligence officials say Al Qaeda has raised money through means as varied as credit fraud, diamond trafficking and the sale of honey." Yet, to the drug war-mongers, the results of their own investigations do not deter them from making self-serving claims. Television is a powerful ally and used effectively by the proponents of the drug war.

#### To Fight The Good Fight

Absent all the hard core, drug war-era rhetoric, political ideologies, testimony by so-called experts, heavy-handed laws, public opinion polls, and well-financed media campaigns, I understand that in the drug war-era I cannot afford to continue using drugs. I know that I need help, not prison. Put simply, speaking only for myself, I have no remorse for my pseudo-offense because I am my only victim. Sadly, I am not alone in this equation either. Until myself and others are liberated from never-ending three strikes life sentences, federal mandatory minimums, and other draconian, drug-oriented sentences, we remain, not criminals, but drug war prisoners.

By excluding one class of drug offender from treatment while including all others brings forth serious constitutional and logical questions. Is it constitutional and fair to provide one class of nonviolent drug offender treatment, no jail whatsoever, and placed on probation -- while the other, similarly situated class of drug offender receives absolutely no treatment

and has to spend at least twenty-five years to life in a mind-bending institution of unadulterated chaos, violence, bloodshed, and death?

I have recently begun to pursue an equal protection claim

in the state courts on my continued confinement and denial of treatment in a community-based facility. No matter how on-point I am in my petition for relief, because of the generational

longevity of the war on drugs, the courts are not at all sympathetic in one's uphill battle to illustrate obvious criminal justice imbalances. Nonetheless, it is my duty as a drug war

prisoner who has done nothing wrong to fight the good fight.

By allowing the criminal justice system too much power over the powerless has resulted in an abundance of litigation, taxing an ready overburdened judiciary. For those of us with

the passionate dedication to fight an unjust sentence, we have filed -- or are in the process of filing -- what seems like a perpetual series of meritorious appeals and petitions. In this endeavor, we are asking the courts to overturn the decisions of lower courts or issue writs which would grant us relief.

It is one's fundamental right to initiate a judicial

proceeding when one has experienced an adverse action, or been denied a right or a liberty interest. Sadly, going to the courts is what those of us at the receiving end of so much injustice have to do if we ever expect to receive any type of relief.

While success is unlikely, we have to try and attack the foundation which supports the wide-range of laws which keep us buried alive in these Gulags of drug war prisondom.

In the end, like in the beginning, nothing really changes

for some of us. Simply because we have fallen between the cracks in a generation of legislative and judicial cowardice, in prison

we remain even though treatment for most is in the air.

what he has demanded, unfettered control of the federal government in order to do what must be done. The people simply trust the Republicans more than the Democrats on matters of national security -- and even the economy.

Tactically, the Democrats committed a fatal error because they failed to take a stand against Bush on Iraq. With the economy in decline and the Stock Market in disarray, the Democrats needed to take the good fight to the president on something important if they expected to be able to possibly overcome his obvious wartime advantage. Yet, going into the election no one in a significant position of leadership within the Democratic Party could muster up the intestinal fortitude to go up against Bush's war machine.

#### The Texas War Monger

During the 2000 presidential election it was apparent that Bush had only a basic understanding of many issues, especially on foreign policy. His opponent, Vice President Al Gore had an expertise on foreign and domestic policy.

One was left to wonder how Bush, if he won, could possibly serve as commander-in-chief of the world's lone superpower.

He barely made it through the debates. Bush is living proof that someone with a decent education and an average level of intelligence would be able to handle the job of president.

War is a Republican favorite. The military industrial complex, a GOP cash-cow which had become bloated on government dollars during the Cold War, had fallen on leaner times after communism could not withstand the power that is capitalism. What the Republican war mongers did was surround the new

president with his father's (former President George Bush) Cold War comrades.

Two years into the Job and Bush is just beginning to

distinguishes the current Supreme Court from many others are 44

a steady stream of 5 to 4 decisions -- too many going down party/philosophical lines in sharply divided opinions.

Shortly after Bush took office Sen. Jim Jeffords of Vermont quit the GOP caucus and went independent. By doing so he allowed the Democrats to take control of the Senate and gave them a

one seat majority. This single seat had a stunning effect on Bush's agenda. The Democrat controlled Senate fought with the Republicans and therefore the president on judicial nominations, the budget, appropriations bills, prescription drug benefits, and the creation of the Department of Homeland Security.

#### The GOP -- Taking Control

Now that the GOP have established firm control of the federal government, by winning 9 out of 12 senatorial campaigns, the president is gearing up to promote his party's agenda/mandate without the impediments he experienced when the Democrats briefly controlled the Senate. All checks have been effectively removed due to the sweeping Republican victories of the 2002 mid-term elections.

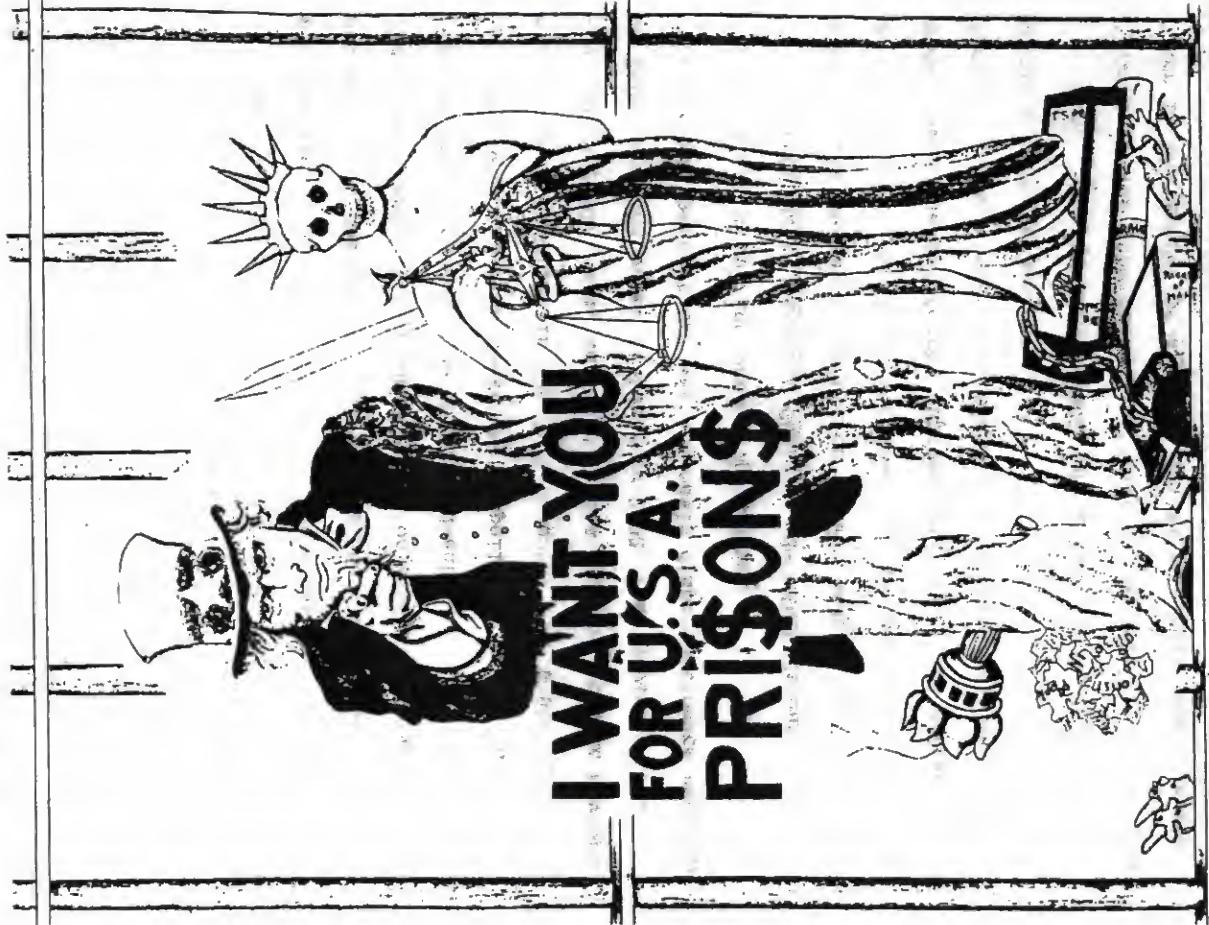
One of the keys to the Democrats recent demise, President Bush effectively nationalized the election and made it about himself. He expended his political capital promoting the war on terrorism, and his hard-line approach on Iraq, to render the lagging economy a non-issue.

The Democrats failed to separate themselves from their opponents and the voters responded accordingly. Bush pushed hard for candidates in key races in order to overcome history. Historically, mid-term elections do not go in favor of the president's party.

The voters answered to Bush's "Bully Pulpit" and put their faith in his Republican mandate. The people gave the president

Treatment for all, except for those of us who have been labeled 17 drug offenders of the worst kind -- three strikers.

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By Eugene Alexander Dey

## The Republican War Machine

By Eugene Alexander Dey

A sentence of twenty-five years to life in prison for petty theft -- is it a violation of the Eighth Amendment's prohibition against cruel and unusual punishment? On April 1, 2002, the United States Supreme Court agreed to answer this constitutional question as it applies to California's three strikes sentencing law.

## The Supreme Court

In criminal matters, but not limited to, there is a sharp philosophical split among the high court justices. Numerous Supreme Court decisions are divided along these lines. The judges who tend to lean conservative on issues of criminal justice hold a narrow five to four advantage.

The nation's high court was compelled to review this issue because of a conflict in the lower courts. The Ninth Circuit Court of Appeals held, in two separate opinions, one in November of 2001, and the other in February 2002, that giving a life sentence for petty theft was a grossly disproportionate sentence and therefore cruel and unusual punishment.

In Andrade v. Attorney General, the Ninth Circuit reversed a 50 to life sentence imposed on Leandro Andrade for two counts of petty theft. This decision was huge in that for the previous seven years the California Supreme Court routinely denied virtually identical Eighth Amendment constitutional challenges to three strikes sentences.

Then, in February of 2002, while the attorney general for California was submitting a petition to the United States Supreme Court in the matter of Andrade, the Ninth Circuit dealt another blow to the constitutionality of three strikes. In Brown v.

The 2002 mid-term elections were a huge victory for President George W. Bush and his Republican Party. They not only padded their majority in the House of Representatives, but reclaimed control of the Senate as well.

George Bush is an immensely popular wartime president.

Ever since the unfortunate events of September 11 (9-11), Bush's approval ratings have been consistent with the people vigorously rallying around their president.

Despite Bush's lofty ratings, his presidency started off on a rather rocky note. The 2000 election for the White House was the closest in modern history. Then-Vice President Al Gore won the popular vote, while then-Gov. Bush narrowly won the Electoral College. Neither candidate was able to move the voters and the election came down to a few thousand votes in the state of Florida.

In the end, with the presidency at stake and recounts being conducted, the Supreme Court stepped-in. The high court did as much after innumerable petitions and appeals were filed by both parties which alleged problems with the ballots and the method by which they had been tabulated in the bitterly contested state of Florida.

When Bush took office in 2001 his party controlled both houses of Congress; additionally, the Supreme Court had just ruled in their favor (Bush v. Gore) in what appeared to be a party-line vote of 5 to 4. Even though the Judiciary is supposed to be nonpartisan and unbiased in all matters, five of the Supreme Court Justices exposed their Republican ties by the predictability of their partisan voting record. What

the tough-on-crime war-hawks are firm in their resolve that

Mayle, two California three strikes petty theft offenders, 19

laws like three strikes and federal mandatory minimums are absolutely necessary in order to make the streets safer -- and to win the war on drugs.

For those who zealously embrace all manners of war, whether it be on terrorism, drugs, or minor deviance, any talk of correcting an obvious injustice is fought tooth and nail.

What the Supreme Court does in the spring may in fact prove to be the final nail in our coffins. However, no matter what the high court does, our families and supporters will continue to fight the good fight until this cruel and unjust law is corrected.

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Richard Brown and Ernest Bray, had their life sentences overturned as well. In coming to their decision, the Brown court largely relied on the holding in Andrade. In so doing, much broader language was used which threatened to open the floodgates for thousands of minor offenders serving life sentences in California prisons for nonviolent crimes.

During all this, a California prisoner, Gary Ewing, a minor theft offender who happens to be HIV positive, was routinely denied by the California Supreme Court in an almost identical set of criminal circumstances as in the cases of Andrade and Brown.

The United States Supreme Court, in their role as the final judicial authority to clear up inconsistencies and confusion in and among the lower courts, issued a writ of certiorari in Lockyer v. Andrade and Ewing v. California. They will hear arguments on these two cases in tandem. The high court will hear oral arguments in the fall, and render a much-anticipated decision sometime in early 2003.

After reading many of the Supreme Court precedents cited by the Ninth Circuit in their decisions in Andrade and Brown, it appears yet another sharply divided decision is about to manifest. In the nation's highest judicial body, on the Eighth Amendment's proposition of proportionality, there is much disagreement.

"Finally there was the kind of conflict between the lower courts that they were looking for," said Kent Schneidegger of the Criminal Justice Legal Foundation which supports three strikes. He went on to say, "I won't make a prediction, except to say it will be close."

Proportionality in a non-capital case brings forth vigorous

debate. Conservative justices usually support very harsh

20

sentences for those who have displayed a pattern of criminality over a period of time, even in the case of relatively minor

crimes. Liberal justices, on the other hand, tend to take the stand that the harshest punishments are meant solely for the

worst type of offender -- like a murderer, rapist, or armed robber.

Finding common ground -- or an overwhelming majority -- in a narrowly divided Supreme Court is not too likely to manifest, especially on the issue of three strikes.

#### The Recipients of the Heavy-Hand

The phenomenon of petty thieves receiving life sentences in California is by no means the exception. In the three strikes-era, heavy-handed sentences for a wide range of minor offenders is the norm. In California prisons there are at least 340 inmates serving life terms for the crime of petty theft.

A crime which is usually prosecuted as a misdemeanor.

However, rulings which attack and undermine the constitutionality of a sentence -- especially in the case of a frequently used law like three strikes -- holds the potential to liberate thousands of nonviolent three strikes recipients.

Unfortunately, I am one of these nonviolent recidivists. Through my observations, studies, interviews, and efforts, when I speak on matters of unmistakable injustice, I am literally speaking for thousands of us. There exists no subject of greater concern within the California prison population than three strikes, any and all court rulings expanding or limiting the law's scope, or any public discussion about possible reform or amendment. I can think of nothing that is watched closer by California state prisoners than three strikes.

There are 7,072 prison inmates within the California prison system who have received a sentence of at least twenty-five

A much-anticipated decision should be rendered by the spring of 2003. Due to the philosophical differences on a court which has produced a litany of 5 to 4 decisions, no one can predict with any certainty what will happen. From all indications it appears another split decision is forthcoming.

#### The Heavy-Hand of Justice

The backers of tough-on-crime measures frequently abandon their responsibility to produce socially responsible and well thought-out legislation. People like myself, nonviolent criminals who have been in trouble in the past, are caught up in the whirlwind which is the war on drugs, crime, and deviance. This is so despite the fact our instant transgressions do not warrant harsh punishments.

California's criminal justice system is responsible for sending over 7,000 men and women away for life under the nation's toughest sentencing law. Over 4,000 of these inmates have been removed for nonviolent crimes. A third strike can be as minor as drug possession or petty theft.

Absent from the three strikes debate is the human side of all these numbers. Numbers which keep growing despite the fact the injustices are myriad, constant, and generally an area of nonstop controversy.

"Are we ever going to get out?" I hear almost on a daily basis. Despite our life sentences, those of us struck-out for minor crimes continue to harbor a glimmer of hope because, with each passing year, our demographic gets bigger and bigger. Support begins to spread because of our families and advocates have worked very hard to try and mobilize a grassroots movement in an era of bi-partisan prison industrialism.

This is a generation distinguished by gold-plated prison systems and bankrupt school districts, one feeding off the other.

By Eugene Alexander Dey

I am 36 years old and have served four years on a sentence of twenty-six to life. My crime against humanity is a nonviolent drug offense. Nevertheless, in California, under certain circumstances, that is all it takes -- three strikes and you are out.

Since California enacted three strikes in 1994 there has been a steady-stream of nonviolent offenders who have been permanently removed from society. I am one of them.

A life sentence is one of the harshest punishments a civilized society can administer. To be on the receiving end of this law for a relatively minor crime has an almost suffocating effect.

#### In The Supreme Court

Two of California's three strikes recipients, Leandro Andrade and Gary Ewing, are in the process of having their cases reviewed by the United States Supreme Court. Both committed minor theft crimes and received life sentences.

On April 1, 2002, the Supreme Court agreed to hear in tandem Lockyer v. Andrade and Ewing v. California. The high court's intervention is long in coming. Some of the Justices have openly criticized the lower courts for failing to resolve this issue.

The court will determine whether the 8th Amendment's ban against cruel and unusual punishment has been violated. Moreover, they will conduct a proportionality test to ascertain if California's three strikes sentencing law results in "grossly disproportionate" sentences.

On Tuesday, November 5, 2002, the court heard arguments from opposing attorneys.

years to life due to this draconian sentencing law. Because of the wide net cast by the frequently used three strikes, the dynamic of who is being struck-out, and for what, is a matter of uninterrupted controversy, litigation and debate.

Eight years into this heavy-handed experiment and the numbers tell a tale of incapacitating both nonviolent and violent offenders alike. The range of offenses to come under the umbrella of three strikes is very wide, with 3,880, well over

half of the total, given life sentences for nonviolent crimes. California's three strikes came into being when Richard

Allen Davis, a predator with a long criminal history of kidnaps, robberies, violence, and sex offenses, abducted and murdered twelve year old Polly Klaas in late 1993. The nation was outraged by this crime and demanded something be done to address repeat, violent felons going in and out of prison -- and leaving a trial of victims in their wake. In a whirlwind, three strikes became a law in March of 1994.

Without going into any philosophical discussion about the death penalty, what Polly Klaas's murderer did was an act worthy of death in nearly any society. To invade one's home and steal away a child's life is the act of a monster -- deserving of death. And that is where the child-killer sits, on death row.

However, being a state prisoner walking among all the madness, having no alternative but to take a bird's-eye view of the end-result of the three strikes law, I still understand that it is not Richard Allen Davis's fault that myself and others likewise situated received life sentences for drug offenses, petty thievery, and other nonviolent crimes. The fault lies with the politics of justice which allows the state of California to strike-out thousands of minor offenders for trivial and nonviolent crimes.

my crime against humanity is the possession of a controlled substance. In my transgression, I have neither victim nor remorse -- one requires the other. Yet, in the world of power politics, people like myself are "potentially dangerous" by virtue of our prior convictions. Regardless of the nature of our offenses, we have become fodder for the tenet that one must be made to pay for one's accumulated offenses, as opposed to what one has actually committed in the here and now.

In mitigation, I am college educated and a general

contractor. In aggravation, I have two or more serious felony convictions from my troubled youth. Education and business enabled me to make a permanent break with my nefarious past. Regrettably, I was not smart or strong enough to seek treatment for addiction on my own -- that is my only crime. But in the three strikes era, especially in Sacramento County which uses this law frequently, a life sentence for someone like myself is almost automatic.

Drug use and abuse is the primary cause behind huge rates of incarceration. In 1980, while the war on drugs was in its infancy, there were 50,000 people incarcerated for drug crimes.

By the year 2000, this number ballooned to 400,000 -- an eight-fold increase. There does not exist a single factor which has affected America's rates of crime and incarceration than drugs.

If the host society chooses to focus its resources in the area of drugs and addiction as a criminal justice problem, then astronomical rates of crime -- and subsequent incarceration -- will be the end result. It comes on a very rare occasion that a lifetime drug addict is able to cure themselves in

response to the threat of being severely punished.

trafficking. For a nonviolent transgression, I am permanently exiled into a subculture which nurtures deviance and shuns attempts to move away from their antisocial behavior. 39

For those of us solely convicted of nonserious crimes, by virtue of a significant decrease in our levels of deviancy, we do not pose the same threat to society as those who have continued to display serious or violent behavior. It is a difficult pill to swallow when one has only committed a nonviolent drug offense, or a minor theft crime to support one's addiction to drugs, then to be given a sentence traditionally reserved for murder in the 1st degree. The concept of justice erodes, leaving deep scars in one's psyche and the inescapable feeling of victimization.

A very small number of criminals are responsible for a large percentage of crime. It is at the height of youth, from the ages of 16 through 25, when one is likely to recidivate in a serious or violent manner. The fundamental injustice behind the "any felony" clause of California's three strikes, that it allows for the permanent removal of older felons for minor crimes. Moreover, they are frequently punished more severely than those who have committed serious, violent, and even heinous offenses.

Regardless of how the Supreme Court comes to their decision, there are thousands of us -- in addition to our families, loved ones, and supporters -- who already know the manner in which

California applies three strikes is cruel and unusual punishment. For us, it is a no-brainer. We are buried alive under the heavy hand of California justice ... for what amounts to nothing.

Under Solem, a court is first to compare the gravity of the offense and the harshness of the punishment; the second prong consists of a comparison of punishments in the same jurisdiction; and the third prong involves a comparison of punishments for similar offenses in other jurisdictions.

At the state level, forty states have recidivist statutes. Twenty-six states and the federal government have implemented a form of three strikes. Yet, despite the trend towards harsher punishments, California is the only state to use three strikes frequently. Further, California is responsible for 92 percent to 94 percent of all three strikes sentences -- and the only state to use this type of sentencing scheme to send minor offenders to prison for life.

#### Life In Prison

Unfortunately, I am a three strikes recipient. Like Andrade and Ewing, and like thousands of others, I am fighting the constitutionality of being permanently removed from society for a nonviolent felony. I am a drug offender. My transgression is purely a matter of addiction, not violence.

Due to the vigorous application of three strikes in California, a sentencing court is compelled to overlook too many variables which should render most three strikes recipients outside the scheme of such a harsh form of punishment. Life in prison should never be an option when the instant offense is minor, drug oriented, and victimless.

Rather than provide a fair sentence for someone with a minor problem, one receives a mindless sentence of life in one of California's 33 prisons. Prisons which are quagmires plagued by gang violence, staff corruption, and large scale drug

to avoid an inevitable and avoidable hardship. In the world in which we live, addiction to drugs is a debilitating disease. Punishing a drug addict simply does not work. As a state prisoner, I am in a population comprised of the hardest core, untreated group of drug addicts in the world. There is no other factor which can be directly correlated to the destruction of these people than the addiction to, and abuse of, every addictive substance known to man.

One can barely put into words what it is like to be given so much time for a crime neither serious or violent. When one's past is theoretically elevated to eclipse one's present transgression, the heavy-hand of justice virtually chokes the nonviolent recidivist to death. Myself and thousands of others are literally buried alive in mind-bending institutions of nonstop chaos, insanity, violence and death.

"Are we ever going to get out?" a three striker recently said to me. This man has already been incarcerated for seven years on an attempted auto burglary -- a crime which usually carries about a year in the county jail. "I have been locked up longer on this petty theft than all my previous crimes put together," said another three striker. These are the questions one asks themselves and others as they are placed in a time-warp of painful soul-searching -- trying to make sense of a senseless situation.

Justice in a democratic society is supposed to strictly adhere to the proposition of fundamental fairness in how the government will oversee the application of how it polices its population. In the drug war era, particularly in California, one can and does receive some of the harshest punishments in the free world. Almost all of the minor offenders to receive

these punishments have drug problems. When someone who has a lengthy record of serious criminality commits a petty theft,

the root cause behind this offense is addiction to drugs. While

the petty thief is not a model citizen, they are no longer

willing to commit serious or violent crimes to feed their drug

habit. Drug addiction, not hard core criminality, is the key.

One three strikes recipient with whom I share this prison

has left a particularly lasting impression on me. His only

crime in the three strikes-era was a nonviolent drug offense.

Because of some burglaries committed in his distant past, he

was given a life sentence. Nevertheless, his victimization

did not end with the heavy-handed sentence itself. In a

senseless prison riot he was stabbed thirteen times by inmates

from a different ethnic group. He was lucky to escape death.

While his physical wounds have since healed,

psychologically, he has become a bundle of pent-up rage, anger,

confusion, and fear. Having committed only nonviolent burglaries

in his past, sending him to a maximum security prison for life

has literally destroyed this man. For a nonviolent drug offense

he has become a psychological and physical victim of the war

on drugs -- and has been reluctantly indoctrinated into the

violent subculture common in maximum security prison.

#### The Proponents and Opponents of the Heavy-Hand

Heavy-handed sentencing schemes have saturated state and federal systems which administer criminal justice. Federal

mandatory minimum drug laws have first-time drug offenders

serving lengthy prison terms. At the state level, forty states

have recidivists sentencing statutes. Twenty-six states and

the federal government have implemented a form of three strikes.

Yet, despite this trend towards harsher punishments,

California is the only state to use three strikes frequently.

On April 1, 2002, the Supreme Court agreed to hear in tandem

Lockyer v. Andrade and Ewing v. California.

37

Since Andrade had absolutely no violence in his background and one of Ewing's prior convictions includes brandishing a knife, there has been much speculation as to why the high court picked these two petitioners. Because of the differences in the instant offenses -- i.e. petty theft and grand theft, as well as the differences in their criminal records -- any number of hypotheticals are inevitable.

#### Three Strikes: Eight Years Later

While the proposition of permanent removal from society for three violent acts was well-received by a large majority of California's voters in 1994, the law has proven to cast a much wider net than how it was promoted to the public at the height of their outrage. From its inception, three strikes recipients have bombarded the judiciary with a wide range of petitions and appeals because the third strike can be "any felony." Violence does not have to enter the equation in any manner whatsoever to activate this law.

There are well over 7,000 prison inmates within the California Department of Corrections who are sentenced to at least twenty-five years to life due to three strikes. Over eight years into this heavy-handed practice and the numbers tell a tale of wholesale incapacitation of both violent and nonviolent offender alike. The range of offenses to come under the umbrella of "any felony" is very wide, with 4,000 men and women, well over half of the total, given life sentences for nonviolent crimes.

In the present matter, the Supreme Court has to conduct a three-pronged proportionality analysis to determine whether or not the petitioners, Andrade and Ewing, have received a

By Eugene Alexander Dey

To the average citizen, the topic of three strikes entails

a severe form of punishment for repeat, violent criminals.

For a growing number of us in the California prison system, the three strikes debate currently being argued in the Supreme Court of the United States has our undivided attention.

On Tuesday, November 5, 2002, the Supreme Court conducted oral arguments on the subject of California's three strikes. They are to decide whether or nor giving a life sentence for a minor theft is tantamount to cruel and unusual punishment.

The court will decide this issue sometime in the spring of 2003. California's three strikes came into being when Richard Allen Davis, a violent recidivist, abducted and murdered twelve year old Polly Klaas in late 1993. The public was outraged, and in a whirlwind three strikes became law in March of 1994.

In November of 2001, Leandro Andrade, a California Prisoner convicted of two counts of petty theft for stealing \$153 worth of videotapes, had his sentence of 50 years to life overturned by the United States Court of Appeals for the Ninth Circuit.

The Ninth Circuit held Andrade's sentence for petty theft offenses was a "grossly disproportionate" sentence and violated the 8th Amendment's ban against cruel and unusual punishment.

Gary Ewing, also a California prisoner and HIV positive, received a sentence of 25 years to life for a single count of grand theft for stealing three golf clubs valued at \$399 a piece.

After the California Supreme Court upheld Ewing's sentence, he filed a petition for writ of certiorari directly to the nation's highest court.

Nationally, California is responsible for 92 percent to 94 percent of all three strikes sentences -- and the only state to use this new sentencing scheme to send minor offenders to prison for life.

The proponents of the three strikes claim the best interest of society has been served and that three strikes makes society safer -- lowering crime rates. In the three strikes debate there has been no stronger advocate of this controversial sentencing law than Secretary of the State of California, Bill Jones, who authored the law.

"Crime in California has declined dramatically since 1993," said Jones. "The only things that are different are more police, tougher laws, and three strikes....Where there are a number of explanations for a given result, the simplest explanation is usually correct. The California's three strikes law is that explanation," he concluded.

This is simply a fallacy and a totally unsupported by fact. In the drug war era, crime is a constant. Mr. Jones is beyond premature in his analysis. It is too early to say with any certainty what is the real cause behind the declines in the rates of crime. Conclusions based on a relatively short period of time cannot be relied upon. One should not be willing to make such conclusions until a sufficient amount of time has elapsed.

Reynolds is simply not qualified to accurately predict why the rates of crime declined based on the numbers available. In a land with myriad laws, people deviate all the time. To claim these pseudo-solutions have made the streets safer is absurd. Eight years after three strikes went into effect, crime in America remains an epidemic -- especially in comparison to one's Western allies.

on the alleged successes of three strikes. He found other studies which have identified various counties in California that were aggressive in enforcing three strikes "... had no greater decline in crime than did counties that used it far more sparingly." In fact, he found that crime dropped 21.3 percent in the six counties that have been the most infrequent user of the law, while the six counties that have used it the most only experienced a 12.7 percent drop in crime.

The backers of tough-on-crime measures like three strikes try their hardest to demonize people like myself. Secretary Jones insists amending three strikes in any fashion "... threatens to put more repeat murderers, robbers and child molesters back in our neighborhoods."

Yet, if one merely looks at who is being permanently removed by this law, one will find that well over half are nonviolent offenders. Because of the manner in which three strikes is applied, nonviolent offenders are unjustly being amalgamated into the category occupied by violent criminals. This has created a new class of offender -- those potentially dangerous. In California, a three strikes recipient can be anyone from a shoplifter to a drug addict to a murderer.

Mark and Joe Klaas, Polly's father and grandfather, have been outspoken opponents to the manner in which three strikes is applied, and how it has been associated to the unfortunate murder of their loved-one. "[W]e blindly supported the initiative in the mistaken belief that it dealt only with violent crimes," said Mark Klaas in an interview right after the law went into effect. Mr. Klaas was used by the three strikes camp to help sell the idea to the public. By the time he realized how the law would really be used, it was too late.

In Mauro, the court held that Arizona jail officials could deny inmates access to materials containing nudity. In California, unlike Arizona, state prison inmates are afforded the right to possess non-obscene materials under California Penal Code section 2601. Therefore, the CDC's administrative bulletin is in violation of state law. Additionally, the CDC has completely circumvented the rule making process, the

Administrative Procedures Act (APA)(Cal. Penal Code 5058), in their eagerness to implement this rule before it can be challenged in the courts.

Faced with yet another obstacle, Starks filed a supplemental brief to petitioner's reply to respondent's answer to the petition for writ of habeas corpus in light of this administrative bulletin. The court of appeals has before them a telephone book-sized series of pleadings. This issue has progressed significantly since it started in 2000. Other members of the affected class of inmates at CSP-LAC have filed a wide-range of petitions, citing, among other things, the authority of California Penal Code section 2601 to possess materials depicting nudity, and the attempt by CDC to circumvent the APA.

Unless the court in Starks intervenes, the local Superior Court issues an injunction or an order, or some other petition results in the issuance of an injunction or an order, then the CDC plans to implement a total ban on all nudity within the 160,000 inmate population of the CDC on September 10, 2002. We will keep you posted.

# THE VOICELESS

*Remember!*

WE ARE IN HERE FOR YOU, YOU ARE OUT THERE FOR US

Once the order to show cause was issued by the Court of Appeals in the matter of Starks, the Attorney General (A.G.) filed a series of continuances to try and come up with a viable defense to Stark's claims. At the state appellate level, which is comprised of three judge panels, the A.G. has to actually address the petitioner's claims.

Eventually, two things happened almost simultaneously:

on July 12, 2002, the A.G. filed his answer to the court's order; on July 10, 2002, the Deputy Director of the CDC, David Tristan, generated an Administrative Bulletin banning inmates from possessing, not obscene material, but anything depicting any type of frontal nudity.

The bulletin says, in part:

"Effective 60 days from the date of this bulletin, inmates will be prohibited from possessing or receiving materials that show frontal nudity of either gender as described therein. Prohibited materials include personal photographs, drawings, magazines and/or pictorials. Frontal nudity includes either exposed female breast(s) and/or genitals of either gender."

As the petitioner filed his reply to the respondent's answer on July 23, 2002, the administrative bulletin was circulated in CSP-LAC. One could make the argument this was a coincidence. However, anyone who has read PLN for an extended period of time, or has any substantial experience with how prison administrations operate, such coincidences happen too often. Based on how

prisoners have historically responded to meritorious petitions which illustrate their inefficiencies, it is safe to surmise the CDC generated this bulletin to render Stark's petition moot no matter how the court responds.

This bulletin relies heavily on the Ninth Circuit Court of Appeals holding in Mauro v. Arpaio (1996) 188 F.3d 1050.

In the drug war-era, criminal justice ideas are formulated and then implemented into policy without the proper studies and tests being conducted to accurately predict eventual successes or failures. Despite Secretary Jones's pseudo-scientific hypothesis that the simplest explanation is "usually correct", three strikes simply does not accomplish what the laws proponents go on record claiming it does.

"It's too late to bring Polly back. But it's not too late to make California a wiser, safer state by amending the three strikes law to apply only to violent felonies," wrote Joe Klaas in a published article. He has been very active in the fight to change how the three strikes is used. The family of the tangible victim has taken an active role in this battle because they have reviewed all the facts -- thus they have come to a logical conclusion that three strikes simply targets too wide a range and is therefore wrong. Joe Klaas, much like Secretary Jones, is actively involved in the debate. However, while one has nothing to gain by coming to his conclusion, the other stubbornly clings to the law he authored.

America has a criminal justice system unlike any other in the free world. For nearly three decades politicians have been pounding the drug war-era pulpit, getting tougher and tougher on all manners of deviance. There is a price to be paid for mass incarceration -- it comes at a great expense. At a time when tax dollars are in short supply, America provides for the world the unique phenomenon of gold-plated prison systems and dilapidated school districts. One feeding of the other.

Is it cruel and unusual punishment to give life sentences to shoplifters? Does that question even dignify an answer.

By Eugene Alexander Dey

Peace officers do a difficult job for a relatively small sum of money. America being a prosperous nation, there exist very few jobs paying roughly \$40,000 to \$50,000 a year where one faces on a daily basis the risk of death, injury, or the unfortunate requirement of having to use force in the performance of their duties.

However, no matter what some will have you believe, incidents of police brutality are not isolated. Within the community of law enforcement, such outrageous conduct is a rite of passage and an unfortunate fact of life.

Nearly all scandals involving police misconduct end up being stifled and downplayed by defense attorneys. When the lawyers take over, the big picture becomes lost in the frame-by-frame recantation of what seems like an act of unmistakable criminality.

Defense attorney John Barnett has already begun to bring doubt into the minds of the jury pool. His explanation is very simple: Inglewood Police Officer Jeremy Morris was defending himself from someone who grabbed his crotch. In other words

-- this is the story behind which a skilled attorney can launch a meritorious defense for an obviously guilty client.

Mr. Barnett is an expert in creating doubt in the minds of jurors. In the case of motorist Rodney King he was able to convince an all-white jury the beating of Mr. King was justified -- despite the videotape. And he is ready to do so again because he understands that people simply do not want to believe the truth when a well thought out lie is much easier to digest.

rely on boilerplate language in what are otherwise summary denials.

Prison officials are allowed to skirt the issues by relying on language which totally misses the point. This misleading language becomes an effective tactic and is consistently regurgitated to petitioner as he makes his way through the grievance system. In the worst cases, even state judges will merely reiterate what prison officials have said. But not always. It is very frustrating to have one's issue handled in this manner; thus, very few pro se litigants have the fortitude to pursue the matter to a satisfactory conclusion.

Too often, the reason behind most of these appeals are due to a prison's administration being too quick to implement policies and procedures which appear to create far larger problems than they solve. The injustices are then exacerbated by failing to afford inmates the right to have their appeals adjudicated by an inmate grievance system rooted in objectivity. Such a breakdown in due process results in the denial of innumerable inmate appeals -- many of which are meritorious and should be given an impartial review.

Another tactic used is to "screen-out" an appeal. If an appeal is in some way deficient, then the appeals coordinator is supposed to return the appeal with a "screen-out" cover-letter attached informing the petitioner of the deficiency which needs to be corrected in order for the appeal to proceed. At CSP-LAC, the institution in which Mr. Starks is incarcerated, and other institutions as well, "screening-out" nearly all appeals is the norm, regardless of whether or not they are actually deficient. This tactic is very effective in that a large number of inmates will simply give up -- and prison administrators know this.

To buttress his claims, petitioner included documentation of other inmates who were also denied various publications which were erroneously deemed obscene by prison officials -- including men's magazines such as Maxim and Stuff which do not even contain any nudity.

In an era of increasingly tough penalological methodologies, prison officials usually deem as obscene, depictions of penetration or contact between the mouth and genitals. According to the California Code of Regulations: "Obscene material means material taken as a whole, which to the average person, applying statewide standards, appeals to the prurient interests, and is material which taken as a whole, depicts or describes sexual conduct; and which, taken as a whole, lacks serious literary, artistic, political, or scientific value." (15 CCR 3006(c)(15)(A))

Under these regulations, magazines like Playboy are generally allowed, while magazines like Hustler and Penthouse are erroneously considered too graphic and therefore inappropriately labeled obscene.

Since petitioner made a substantial showing that prison officials were going too far in their interpretation of what is obscene -- obscenity being a well defined legal term -- the Court of Appeals issued an order to show cause as to why the court should not issue a writ of habeas corpus (grant relief) in this matter.

In the California judicial system, petitions filed in prose, especially those attacking prison conditions, are almost always summarily denied. Furthermore, some prisons being worse than others, the institution's administrative grievance system rarely affords one the due process to which they are entitled. Very few grievances are granted; and reviewers almost exclusively

Law enforcement take violence very serious, with some cops being more prone towards violence than others. Yet, in the case of beating a suspect, they are simply not willing to hold themselves to the same legal standards they are empowered to enforce. In their minds, they are above the law.

When I see an episode of police brutality I do not need to have the incident explained to me by a defense attorney, prosecutor, police spokesperson, or some so-called expert on such matters. For those of us who grew up on the streets, getting beat up by the cops was often one of our rites of passage into adulthood -- with our bumps and bruises, cuts and injuries, being our red badges of courage.

If someone takes a swing at a cop, resists arrest, smarts off to the wrong cop, or is too drunk to cooperate, then cops will do what they feel they have to do. Most officers, especially the really aggressive ones, are the main culprits to overreact in these situations. Beating a perpetrator -- even if he has not committed a serious crime -- is an act of solidarity. Absent a group confession by conscience-laden officers, or an unforeseen video camera, cops simply have little about which to worry in cases of abusing their arrestees.

I find it lamentable and grow weary of seeing police brutality on the news, then to have an array of persons going on record trying to justify or downplay an obviously troubling problem. I know from being somewhat expert in such matters, that if I am a skinny, mentally challenged, 16 year old kid -- and handcuffed as well -- I am not a threat to anyone. In such a situation, and I have been at the receiving end of similar beatings, one cannot be in a more vulnerable position. The fact that Donovan Jackson was outnumbered and handcuffed renders what Officer Morris did to him unacceptable in any situation.

This was the act of a coward.

Officer Morris of the Inglewood Police Department is like

a lot of his colleagues -- he is simply a bad cop. To claim

a skinny, handcuffed minor is preposterous. The leaders of the African American community have every reason to be angry. Such events do not need to be burned into their minds with

recorded images. They know like I know, that police brutality is alive and well in drug war-torn America. And it always will

be.



#### California Prisonrats Try To Extend Their Ban On Obscene Material To Include Rudeity

By Eugene Alexander Dey

In November of 2000, California state prisoner, Keith Starks, filed an inmate grievance alleging magazines he ordered were inappropriately deemed obscene and being unlawfully withheld until he paid for the postage to send them to an approved correspondent, rather than back to the publisher.

After fully exhausting his grievance with the California Department of Corrections (CDC), the petitioner filed a writ of habeas corpus in the California Superior Court of Los Angeles County. In this petition he alleged that prison officials do not have jurisdiction or authority under California law to make the determination of what should or should not be considered obscene -- and the magazines in question were not obscene. He also alleged that the prison's operational policy is too broad and the demand of \$3.20 for return postage constituted a form of extortion.

On February 28, 2002, the Superior Court denied the petition. The Superior Court held inmates may be restricted from obtaining obscene material -- which is illegal to own or publish in the U.S. The petitioner never alleged inmates could obtain obscene material, but that the magazines in question were not obscene. Thus, the court, like the CDC, failed to address the issues of the petition. (In re Starks BH001837, Los Angeles Superior Court) In essence, the court used virtually identical verbiage as used by the CDC in denying the prisoner grievance.

Starks then filed a petition for writ of habeas corpus in the California Court of Appeals. (In re Starks B151949)